

1 lease agreement dated November 24, 1987. Do you see that?

2 A Yes.

3 Q How does this relate to the call letters on the
4 sheet of paper?

5 A Same frequencies, same call signs as the previous
6 one.

7 Q Thank you. Please refer to Kay Exhibit 29. This
8 is a lease dated May 11, 1985. How does this relate to
9 those call signs?

10 A This is frequency 508.2375 and it relates to WIK
11 287.

12 Q Thank you.

13 MR. KNOWLES-KELLETT: Can you just repeat that
14 call sign for us?

15 THE WITNESS: WIK 287.

16 MR. KNOWLES-KELLETT: Can you just check quickly,
17 is that on the list of call signs we challenged?

18 THE WITNESS: Yes, it is.

19 MR. KNOWLES-KELLETT: Okay.

20 BY MR. SHAINIS:

21 Q Mr. Kay, would you look at Kay Exhibit 30, please?

22 A Yes.

23 Q And, how does this relate to any of the call signs
24 on the list in front of you?

25 A This is where the Forest Service finally sent me

1 my updated USFS permit for the TLF Building on Sierra Peak,
2 about two and a half years after I had, in fact -- well,
3 more than two and a half years after I had, in fact, moved.
4 And, I believe it covers -- well, there's an index on here.
5 It covers them all, I believe, that were at Sierra Peak.

6 Let's see, WIK 726 is covered. WIK 287, WIK 374,
7 WIK 664, WIK 896, WIK 983 is covered. WIK 875 is covered.
8 It covers all the subpart L's at Sierra, with the exception
9 of WIL 260 -- no, it covered it, too. It's there, too, WIL
10 260.

11 The only ones not are WIL 469, which I think was
12 granted after this list, but it's the same frequency as WIK
13 983, so the early ones constructed the newer ones at the
14 same frequency, it has to be constructed, cause the first
15 one was there. And, WIH 339, which is for 507.7125, which
16 is matched up with another frequency here of WIL 235, the
17 same frequency, so that one is covered, as well.

18 By a little extrapolation, the Forest Service
19 permit here covers every frequency that the Commission has
20 challenged for construction at Sierra Peak.

21 Q Mr. Kay, could you turn now to Kay Exhibit 32?

22 A Yes.

23 Q Never mind, I'm sorry, strike that. Would you
24 please look at Kay Exhibit 34?

25 A Next book?

1 Q Sorry.

2 (Pause.)

3 MR. SHAINIS: I'll give you mine. We will not go
4 through this page by page.

5 CHIEF JUDGE CHACKIN: Maybe before we get into
6 this, we should take a ten minute recess?

7 MR. SHAINIS: Fine, thank you, Your Honor.

8 (Whereupon, a short recess was taken.)

9 CHIEF JUDGE CHACKIN: Back on the record. Let's
10 proceed.

11 MR. SHAINIS: I'd like to turn the cross-
12 examination over to Mr. Keller now on the loading part, if
13 there's no objection.

14 CHIEF JUDGE CHACKIN: Do you have any objection?

15 MR. SCHAUBLE: No objection, Your Honor.

16 CHIEF JUDGE CHACKIN: Go ahead.

17 BY MR. KELLER:

18 Q Okay, Mr. Kay, do you have Exhibit 34 in front of
19 you?

20 A Yes.

21 Q This is Kay Exhibit 34. Would you please describe
22 briefly what that is, what those documents are?

23 A Radio licensees have always referred to these as
24 the FCC's 800 MHz loading cards.

25 Q Is it true that these were documents that were

1 relevant in the days prior to the elimination of end-user
2 licensing by the FCC?

3 A Yes, they were -- I believe the Commission
4 discontinued these sometime in the middle of 1992.

5 Q There has been testimony by a few witnesses, and I
6 believe some stipulations, that October of '92 is an
7 approximate time frame. Is that consistent with your
8 recollection?

9 A That's when they eliminated SMRS end-user
10 licensing. However, the record keeping on the loading
11 cards, I believe the Commission discontinued it several
12 months prior to that, somewhere like May or June of '92 is
13 when they actually stopped updating these cards. That's my
14 information.

15 Q Now, who maintains these cards, the licensees or
16 the Commission?

17 A These were maintained by the FCC licensing
18 facilities' personnel in Gettysburg.

19 Q Do you have any knowledge of how they maintained
20 these, where they took the information from?

21 A I believe they updated these cards from license
22 grants and cancellations and other changes, such as 800A
23 responses.

24 Q The particular copies that were put into evidence
25 in Exhibit 34, those were provided by you, correct?

1 A Correct.

2 Q Where did you obtain them from?

3 A I obtained them from International Transcription
4 Service, the authorized transcription service for the
5 Federal Communications Commission.

6 Q Either from your own knowledge of having obtained
7 them and/or from reviewing through them now, can you place
8 this particular set of cards into a general time frame?

9 A I believe these represent the last -- these were -
10 - they had already ceased updating them at the time that
11 these were photocopied, so they were the last of the last.

12 Q During the period 1992, you routinely, as part of
13 your business practices, kept copies of these, correct?

14 A For the preceding years, I used to pull copies
15 about every six months or so to get an updated set of them.

16 Q Now, it's true, is it not, that in preparing this
17 exhibit, you selected specific cards?

18 A Yes.

19 Q First of all, tell me generally how the FCC
20 organized its loading cards? I mean, this is not the sum
21 universe of all the loading cards maintained by the FCC,
22 correct?

23 A No, it would fill a big part of this room, if you
24 had them all.

25 Q Can you describe first of all how the FCC

1 organized the cards or categorized them?

2 A They broke the country, first of all, into
3 geographic blocks. I believe it was one degree of latitude
4 and two degrees of longitude, and then numbered blocks, so
5 that you had geographic rectangles of the country, i.e., in
6 numbered blocks.

7 They then subdivided these blocks into various
8 services. Channels one through 150, the business pool, the
9 land transportation pool, the public safety pool, the new
10 SMRS pool and the old trunked pool, so that would be six
11 separate sets of cards would be kept in each block.

12 Q What is the particular set of cards that you
13 produced, provided for this exhibit?

14 A I took cards from the one through 150 frequency
15 area, the general access pool area, for Blocks 180, 181, 203
16 and 204, some selected cards, because that's the Greater Los
17 Angeles area.

18 Q When you say some selected cards, what do you mean
19 by that?

20 A I selected cards for stations that were assigned
21 the same frequency or co-channel as some of my stations.

22 Q Just to back up so the record is clear, when you
23 referred a moment ago to the one to 150 and the general
24 access pool, is that the same frequency as is sometimes
25 referred to as the general category channels?

1 A Yes.

2 Q Now, information on these cards are essentially,
3 it does report information about end-user licensing,
4 correct?

5 A It can. What it shows is where all the base
6 station facilities are and who all is licensed to use it.
7 Also, the type of service the base station facility is.
8 Like, this is indexed off the base station frequencies.

9 Q But, it collects, but the source of all the
10 various information that's collected there are various FCC
11 licenses, correct?

12 A Correct.

13 Q Is it organized by call sign?

14 A No, it's sort of by frequency, just like I sort my
15 records.

16 Q Mr. Kay, when you were on direct examination, you
17 testified about the procedure that you sometimes went
18 through in terms of when you were making an application for
19 a new facility. You testified at length about a procedure
20 you went through to evaluate loading. It was almost like a
21 procedure that you went through. Do you recall the
22 testimony I'm referring to?

23 A Yes.

24 Q I believe you said you had first looked at
25 stations, loading at stations other than your own?

1 A Correct.

2 Q I don't need you to repeat the entire testimony,
3 but could you just briefly summarize the parameters of the
4 stations other than your own that you would look at and
5 apply for a particular channel?

6 A It goes to selection of frequencies, how we would
7 do it. We generally would start with a list of channels one
8 through 150, because that's the area we were concentrating
9 on. We would then take the loading cards for blocks 180,
10 181, 203, 204, and see what stations are licensed on a
11 particular frequency within that area and see what the total
12 loading is, and whether or not there would be any open
13 loading available for a new applicant.

14 We would then verify that information that was on
15 these cards with the on-line database and also, by
16 referencing newly filed applications through Washington
17 radio reports, determine whether or not a frequency was
18 available. And, if it was available, how much existing
19 loading was on it. But, we would start with these cards to
20 give us a good idea where we were going.

21 These cards also made a very handy notepad, too,
22 when one was using the on-line database. You could take
23 these cards, go on-line database, and any changes you'd
24 marked on the piece of paper for these cards. So, you would
25 look at, like if you flipped through here, the first one is

1 noted as 180-6. It also notes as co-channel with 181/30,
2 which means Block 180, card 30 is a same frequency, co-
3 channel station.

4 And, it tells us the frequency is 806.2875 --

5 Q Excuse me for one moment, Mr. Kay. For the
6 record, what page of the exhibit are you referring to?

7 A It would be number three. Your number is three.
8 The actual card number for FCC is six.

9 Q Now, you stated a moment ago that you selected
10 these particular cards within those blocks because these
11 were many of the stations, many of the channels in which you
12 also had licenses?

13 A Correct.

14 Q Did you decide particular licenses held by you?
15 How did you make that selection? Do these cards represent
16 all of the general category channels that would have been
17 licensed to you in this time frame, in the 1992 time frame?

18 A I don't think all of them. I just like to get a
19 good selection.

20 Q You've had an opportunity, outside the context of
21 this hearing, to examine this exhibit several times. Does
22 it reflect anything regarding the co-channel climate of the
23 channel licenses --

24 MR. SCHAUBLE: Objection, Your Honor. I'm not
25 sure if it's been established at this point that these

1 records can be relied on for the truth of the matter of the
2 actual loading environment at this time.

3 CHIEF JUDGE CHACKIN: Overruled.

4 THE WITNESS: I used these cards to give me an
5 idea where the loading was on a channel, and I found these
6 cards to be, while not 100 percent accurate, certainly a
7 very convenient starting point from which to work. And,
8 we'd take a look at these, take a look at the licenses, see
9 the expiration dates, the number of mobile counts assigned
10 to a particular license. Very rarely were the mobile counts
11 ever modified by the user, so if a company was licensed for
12 a certain number of units, there's a strong likelihood they
13 would still have that number of units. And, I would verify
14 that through the on-line database service.

15 BY MR. KELLER:

16 Q And, with both in using the cards and any
17 subsequent verification of the data in the on-line database,
18 what you are really looking at in terms of loading are the
19 number of mobile units licensed on end-user licenses for
20 stations other than your own, correct?

21 A Not necessarily. End-users, yes, but not
22 necessarily just end-users. Community repeater licensees,
23 as well, and single user stations, where a large company has
24 a repeater of its own. I would look at the loading of co-
25 channel stations, whether it was as a single licensee as in

1 a large company, a shared community repeater with a
2 multitude of licensees, or a competitive SMRS with end users
3 on it.

4 All three would be represented on these cards.

5 Q But, ultimately, though, even within those three
6 groups, you're looking at numbers of mobiles or numbers of -
7 - you're looking at information licensed by the FCC for
8 companies other than yourself, correct?

9 A Yes.

10 Q You have no way of personally knowing what those
11 companies are doing in reality, correct?

12 A Unless we go research them and even then, that
13 would only give us a basis on which to file complaints if we
14 found something grossly amiss.

15 Q So, in trying to determine what the co-channel
16 loading is on a given facility, whether it's one that you
17 already have or one that you're preparing to apply for, you
18 really have nothing to rely on, other than what the FCC's
19 records and database showed you, correct?

20 A That's correct.

21 Q Mr. Kay, could you take a look at Exhibit 35, Kay
22 Exhibit 35, please?

23 MR. KELLER: Your Honor, may I approach the
24 witness?

25 CHIEF JUDGE CHACKIN: Does the witness have a copy

1 of 35?

2 MR. SHAINIS: Yes, Your Honor.

3 BY MR. KELLER:

4 Q I would refer you to Kay Exhibit 35. Have you had
5 a chance to find it there in the book?

6 A Yes.

7 Q First of all, could you describe generally what
8 these pages are?

9 MR. SCHAUBLE: Objection, Your Honor. My
10 understanding was this exhibit was being offered solely for
11 a very limited purpose, i.e., to provide additional examples
12 of Carla Pfeifer's handwriting.

13 MR. KELLER: And, my question, Your Honor, is
14 simply going to authenticate the document for that purpose.

15 CHIEF JUDGE CHACKIN: Overruled.

16 MR. KELLER: I'm first just asking him what it is.
17 If I can lead the witness a little bit, I can cut through a
18 lot of this. Let's do it this way.

19 BY MR. KELLER:

20 Q Turn to pages three, four and five of the exhibit.

21 A Yes?

22 Q Is it true that pages three, four and five
23 represent copies of canceled checks that you had written to
24 Carla Pfeifer?

25 A Yes.

1 Q These are checks that you wrote to Carla Pfeifer
2 on the dates indicated thereon, which were later processed
3 by your bank and returned back to you?

4 A Yes.

5 Q I'm on page three, if you see the check, and then
6 to the left of the check, is that a copy of the back of the
7 check?

8 A Yes, it is.

9 Q Do you see the endorsement at the top there?

10 A Yes.

11 Q What name is that?

12 A Carla Pfeifer.

13 Q Did you sign that?

14 A No.

15 Q Page four, if I asked you the same questions, is
16 this the same thing, the copy of the front of the check and
17 then to the left, a copy of the back of the check?

18 A Yes.

19 Q And, that endorsement purports to be Carla Pfeifer
20 at the top. Did you sign that?

21 A No, I didn't.

22 Q And, then, the same thing on page five. There is
23 a copy of an endorsed check, purports to be an endorsement
24 of Carla Pfeifer. Did you sign that?

25 A No.

1 Q Mr. Kay, turn to Kay Exhibit 43, please?

2 A Yes.

3 Q This appears to be some more loading cards. Can
4 you describe what these particular loading cards represent?

5 A This is a loading card for Block 204, Card 23. It
6 represents 852.4875 MHz.

7 Q Isn't it true, Mr. Kay, that at one time Mr.
8 Cordaro, Vincent Cordaro held an SMRS authorization for a
9 base station on that frequency at Rasnow Peak?

10 A Yes.

11 Q If they do, how do these loading cards relate to
12 that facility?

13 A Well, the first card shows a 41 count. The second
14 card shows an additional 20 count and that would bring the
15 loading on that frequency, that would have to be considered
16 by any applicant to that frequency to about 61 out of the
17 70.

18 Q Let me back up and take this a step at a time.
19 When you said the first card, you're referring to page two
20 of the exhibit, correct?

21 A Well, it's --

22 Q The page numbers are -- the second sheet of the
23 exhibit?

24 A Yes. Page one represents the front of the FCC
25 loading card, page two represents the back of the FCC

1 loading card. Page three represents a different FCC loading
2 card, but on the same frequency.

3 Q So, going back to what is page two of the exhibit,
4 so the record is clear, it's a copy of the card, in the left
5 hand corner it says, 852.4875 and across the top in the
6 center it says, 204-23, back. That's the card we're
7 referring to?

8 A Yes.

9 Q Now, when you said that card shows a 41 loading
10 count, what do you mean? Can you look at the information on
11 this card?

12 A The lower right hand corner shows 41.

13 Q Do you know how that number was derived, based on
14 the information on this card?

15 A Yes, somebody at the FCC added up the number of
16 mobile counts showing on the various licenses that are shown
17 on the card, and it came to a count of 41.

18 Q So that our record is clear, and this is just for
19 edification purposes and beginning to have an understanding
20 of how these cards work, can you walk through those licenses
21 that are shown on this page, starting with LVJ Leasing?

22 CHIEF JUDGE CHACKIN: What number page are you on?

23 THE WITNESS: We're still on the first page.

24 BY MR. KELLER:

25 Q The first page of the exhibit?

1 A Yeah, where it says Santa Fe Energy LP. It counts
2 for ten.

3 Q So, it's your understanding that that represents
4 ten mobiles and/or controls licensed to Santa Fe Energy?

5 A Correct.

6 Q For a facility operating on this base station
7 frequency?

8 A Correct.

9 Q Okay.

10 A Then we have LVJ Leasing.

11 Q That's on page two of the exhibit?

12 A Right, it counts for seven. And, then, National
13 Steel & Tube Distributors. It counts for six. And, then,
14 IN-Co. Financial for 18.

15 Q Then you said a moment ago that somebody from the
16 FCC had totaled this up. Most of these handwritten notes
17 and these lines through here, were these on the original
18 card or were these ones that you wrote in?

19 A That's the way the FCC does its thing.

20 Q Okay, if you could take a moment and just flip
21 through each of the pages of this exhibit, and do you
22 recognize any hand markings on this exhibit that were placed
23 there by you or your staff, rather than the FCC?

24 A Well, I did not -- let me explain here -- the FCC
25 card is the inside side, which was then copied onto the

1 eight and a half by 11. If I made notes or anything, they'd
2 be on the -- in the border area of the eight and a half by
3 11.

4 Q So, you testified earlier about having placed a
5 note, you did not mark the actual cards?

6 A The internal card is the actual FCC card stock.

7 Q So, any handwriting we see on these cards, and
8 this applies to the other exhibit we looked at, would be
9 marks that were on the actual cards in the FCC's files?

10 A Correct.

11 Q Now, have you --

12 A They'd be outside the area of the card.

13 Q Understood. Have you had an opportunity
14 previously to review this exhibit in order to determine the
15 loading on the frequency 852.4875 at Rasnow? And, in this
16 time frame, which would also be mid-1992, correct?

17 A Right, it would have been a 61 count.

18 Q Now, what, if any, impact would that have had on
19 your ability to have made an application in your own name
20 for this frequency at Rasnow Peak?

21 A I need only showing a proposed new user for nine
22 mobiles or greater. Or, two users equalling nine or
23 greater.

24 Q That would have been known as one of these package
25 filings that you testified about earlier?

1 A Correct.

2 Q So, in other words, just to clarify so that the
3 record is clear, had you so desired and wanted to make
4 application for this frequency at Rasnow Peak in this time
5 frame, provided that you packaged it with one or more user
6 applications totally at least nine mobiles, then any loading
7 on other co-channels, on other facilities within, is it 40
8 or 70 miles?

9 A It would have been loading on any of my other
10 facilities within 40 miles.

11 Q It would have been irrelevant, correct?

12 A That's correct, doesn't matter.

13 Q So, that you would then have been, to use your
14 words, you would have been applying into a fully loaded
15 environment, correct?

16 A That's correct.

17 Q Mr. Kay, please turn to Exhibit 44? Actually, I'd
18 like you to look at Exhibits 44 and 45 together, if you
19 would? Just review both of them and then when you've
20 finished reviewing them briefly, I'll ask the question.

21 (Pause.)

22 A Okay.

23 Q First of all, can you describe what is Exhibit 44?

24 A Exhibit 44 is the installation and operation
25 manual for a device called an Easy-Link, manufactured by

1 Rayfield Communications.

2 Q What about Exhibit 45? What is that?

3 A Forty-five is the instruction manual for a product
4 called the Model 80 Trunk Bridge, manufactured by Zetron.

5 Q Now, you were present the day Mr. Oei testified,
6 were you not?

7 A Yes, I was.

8 Q You heard his testimony?

9 A Yes, I did.

10 Q You heard his testimony regarding an inspection he
11 conducted at your offices in May of 1992, correct?

12 A Yes.

13 Q You were also, in fact, present at that particular
14 inspection?

15 A Yes, I was.

16 Q You heard him testify about some sort of device
17 that's been referred to by various people in this proceeding
18 so far as a remote link, a cross-link -- it's been referred
19 to as a lot of different things.

20 First, I'd like to ask you, what is the device?
21 What device was it that Mr. Nakamiya, who testified
22 conducted the inspection in May of 1992, what device was it
23 that he actually inspected?

24 A It consisted of basically four devices. A power
25 supply to E.F. Johnson, Model 8600, actually 8615, to be

1 precise, 800 MHz, trunked radios and an Easy-Link unit that
2 connected the two Johnson radios together.

3 Q So, the Easy-Link unit that you testified, is this
4 the thing that some people have been referring to as the
5 cross-link device? Is the Easy-Link unit the cross-link
6 device that Mr. Oei was talking about?

7 A Technicians would call this back to back and full
8 stations, and the Easy-Link connected the two control
9 stations to each other.

10 Q For the record, a control station is a license or
11 a control station license is an authorization to operate on
12 a mobile frequency for the purposes of controlling the base
13 station, is that a fairly accurate statement?

14 A It transmits on the low side, 806 to 821 MHz, the
15 same frequency that was being transmitted by a mobile.

16 Q And, control stations are frequently authorized at
17 fixed locations, correct?

18 A Yes.

19 Q Although they can be also mobile, can they not?

20 A The control station is generally at a fixed point,
21 as you normally the office you would put what users call
22 their base station unit, but that's an inaccurate
23 description. Then you radio in an office.

24 If we had a radio here, it would be a control
25 station, where oftentimes people would call, go talk on the

1 base station radio. They used that -- customers used that
2 term when the true definition is a control station.

3 Q Is it correct that you held a control station
4 authorization for the two radios that you just discovered as
5 part of this configuration, correct?

6 A Yes, I did.

7 Q They were authorized to control two different base
8 stations, correct?

9 A Two trunk SMRS stations. WMNY 402 and WNJA 910.

10 Q The WMNY station that you just mentioned, where
11 was it located?

12 A Mount Lukens.

13 Q How far away was that from your office at Van
14 Nuys?

15 A About nine or ten miles.

16 Q The second call sign you mentioned was?

17 A WNJA 910.

18 Q I do not have your memory for call signs. And,
19 where was that facility located?

20 A Oat Mountain.

21 Q How far is that from your office?

22 A Approximately eight to nine miles, maybe ten.

23 Q What is your understanding of the parameters that
24 you're allowed to operate under control station licenses?

25 A The control station licenses are a trunked SMRS

1 user license that allowed not only control stations, but
2 mobiles, to operate as well, for the exclusive, to operate
3 on the exclusive frequencies assigned to the trunk systems.

4 Q Now, I want to state the way I think I understand
5 it and tell me if I got it right. This Easy-Link device
6 that's connected with these two mobile units and these two
7 Johnson radios in such a fashion that you took the output
8 from one of these two base stations that you mentioned, it
9 was received on one of these radios, and somehow, in
10 conjunction with this Easy-Link unit, was then retransmitted
11 on the input of the other base station so that the two were
12 effectively linked together, is that it?

13 A It created a two-way, rebroadcasting path, is what
14 it did. It would take the signal from Oat Mountain -- a
15 mobile unit, for example, would Key up the Oat Mountain
16 facility. It would then transmit. That signal would be
17 received by one of the radios, which would go through the
18 control unit, activate the second radio, transmit up to a
19 second repeater, and it would then be relayed out to
20 Mobile B.

21 Mobile B would then transmit, be received by the
22 second relay, come back down to the link radio, take a
23 reverse path, go back up to Station A and out to Mobile A.
24 It basically acted as a bridge or a mirror, a link, a bounce
25 point, however you want to call it. A fixed relay is

1 another word, to link two trunked SMRS stations together, so
2 that a mobile working with one could talk to a mobile
3 working through the other, to thus expand the coverage range
4 of the two systems beyond the footprint that would normally
5 be enjoyed by just one.

6 Q Forgive my memory again, but the two base stations
7 we're talking about are Santiago and Oat?

8 A Oat and Lukens.

9 Q Oat and Lukens. So, what you've just said, I
10 believe, is that by virtue of using this link in this way,
11 the user has the effective footprint of both Oat and Lukens,
12 rather than just one?

13 A Correct. A mobile unit in Hollywood who can't
14 talk to Oat can talk to Mount Lukens, which bounces through
15 this to Oat Mountain, which talks to a mobile unit in Canyon
16 Country that can't get Lukens.

17 Thus, a mobile unit in Hollywood could talk to a
18 mobile unit in Canyon Country directly.

19 Q You mentioned that these were trunked SMRS. That
20 means they were licensed to you as what the Commission
21 refers to as YX's?

22 A That's correct.

23 Q Is it also your understanding that in the 800 MHz
24 band, they felt SMRS generally has exclusive use of its
25 channel within a certain radius?

1 A That's correct.

2 Q What is that radius?

3 A Seventy miles.

4 Q Referring now to Exhibit 44, is the use that you
5 just described consistent with the manufacturer's
6 descriptions --

7 A Yes, it's exactly --

8 Q -- stated purposes of the device, etc.?

9 A It's exactly what it was designed for, exactly
10 what it was built for and exactly the way that we were using
11 the Easy-Link unit and the Zetron units.

12 Q And, now, help me with Exhibit 45. How does the
13 Zetron unit relate to the Easy-Link, if at all?

14 A Well, I included the Zetron manual here because it
15 is, for all intents and purposes, the same item. However,
16 its manual is far more detailed and gives some nice pictures
17 for illustration purposes, as to how the system would
18 function.

19 The Rayfield manual is rather bare for explanation
20 as to how it works, whereas the Zetron is far more detailed
21 and has far more information on how it works, as well as
22 some nice pictures in it, because they work identically.

23 Q You do understand, do you not, that when Mr.
24 Nakamiya came to inspect you in May of 1992, this device,
25 that it was for purposes of investigating a complaint of

1 alleged interference?

2 A They didn't even have a clue I was licensed when
3 they walked in the door.

4 Q But, that wasn't my question. Is it your
5 understanding that they were investigating an allegation or
6 an alleged interference complaint?

7 A They were of the opinion that this was some type
8 of jamming operation.

9 Q Did you come to learn that there had been a
10 complaint about possible interference that led to this
11 inspection?

12 A Yes, I read the complaint.

13 Q Who was the complaint from?

14 A A fellow by the name of Jim Doering.

15 Q Did you come to learn what particular facility of
16 his he was claiming was being interfered with?

17 A Mr. Doering was licensed for a conventional SMRS
18 station 73 miles away from my trunked SMRS station on Oat
19 Mountain.

20 Q Is it, in fact, that facility that he claims was
21 being interfered with?

22 A Yes.

23 Q That was 73 miles, which was beyond your exclusive
24 protection area, correct?

25 A He was beyond my exclusive protection area, and I

1 was operating within my mobile designated area. His mobiles
2 were not. He was sour grapes because I was using the
3 channel.

4 Q In the land mobile environment in the Los Angeles
5 area, is it common or uncommon that you will sometimes get,
6 and I use this term, "interference" between two stations
7 that are both operating within their exclusive service
8 areas?

9 A Paul Oei used an interesting term which is very
10 accurate. He called it legal interference. It's where two
11 stations are operating perfectly in accordance with their
12 license, yet one or both operators are not the least bit
13 appreciative of the other guy being on the channel, because
14 the radio signals unfortunately don't politely end at the
15 end of your authorized service area, and oftentimes do play
16 with the other guy's operations. It happens, and sometimes
17 you can spot it more than just 70 miles.

18 We've had "legal interference" from San Diego into
19 Los Angeles on a regular basis. We put up with it. There's
20 nothing you can do about it. It's legal. There it is,
21 though.

22 Q One last question on this line. There was
23 testimony by Mr. Oei, I believe, that when Mr. Nakamiya
24 conducted the inspection and you led them to the room where
25 this device was and he saw you disconnect some sort of a

1 cable and plug in a microphone, do you recall doing any such
2 thing?

3 A Yes, it was an ordinary six pin modular jack like
4 you find with telephones. The two radios have a six pin
5 modular jack the microphone goes into. When used with the
6 Zetron unit, you have two cords that run from the Zetron
7 unit to the mike jacks, the radios. So, in order to
8 manually key the microphone for Mr. Nakamiya to take his
9 power readings, I disconnected one of those modular jacks
10 and clipped a hand microphone that was kept there, so that
11 the radio could be manually keyed up with the hand
12 microphone, so he could take his power readings.

13 Q So, the fact that that cable was plugged into that
14 modular jack when he first arrived is consistent with the
15 standard configuration of this particular Easy-Link
16 equipment, correct?

17 A If it wasn't plugged in, the Easy-Link wouldn't
18 have worked.

19 Q And, the fact that you removed the cable and
20 plugged in the microphone was necessary to facilitate their
21 inspection, correct?

22 A Exactly.

23 (Pause.)

24 Q Mr. Kay, I want to hand you back, I want to show
25 the witness again this document.

1 MR. SCHAUBLE: Okay, is this the same page?

2 MR. KELLER: Same page.

3 BY MR. KELLER:

4 Q Mr. Kay, referring to one of the call signs on
5 that page, WNXW 487, is that facility, is that particular
6 license different from the others on the list?

7 A Yes, it's licensed to Buddy Corporation as a
8 business radio service, 800 MHz, community repeater
9 facility.

10 Q What, if any, recollection, information, knowledge
11 do you have regarding the timely construction of that
12 particular station?

13 A It was timely constructed at both locations.

14 Q And, what specific information do you have in that
15 regard?

16 A We used it for our own internal use, it's usually
17 used for our own internal use, but we have no records
18 because we weren't commercially selling it. Because you
19 don't commercially sell business radio service licenses.

20 Q Do you recall who constructed this station?

21 A I did.

22 Q Do you remember doing it?

23 A Yes.

24 Q To the best of your recollection, do you know how
25 long after receiving the authorization you constructed it?

1 A Within a couple of months.

2 Q Mr. Kay, please turn to Exhibit 48. Have you had
3 a chance to skim over this document?

4 A Yes.

5 Q What is this document?

6 A This is an inventory list of the two-way radios in
7 my company's possession, dated 6/23, 1998.

8 Q Is it true, then, given that date, that you had
9 this inventory conducted in preparation for this hearing?

10 A Yes.

11 Q And, in preparation for your testimony today, you
12 had a chance to go through and roughly calculate how many
13 radios are reflected on this list?

14 A I believe we figured there were 600 something
15 radios here.

16 Q So, approximately 600 would be accurate?

17 A Yes.

18 Q And, does this reflect both 800 MHz and UHF
19 radios?

20 A Yes, it does.

21 Q And, does this list reflect both trunking radios
22 and conventional radios?

23 A Yes, it does.

24 Q The document can speak for itself in that regard.
25 With respect to the trunking and the conventional, do you

1 have any information or knowledge about the distribution
2 there, the relative distribution?

3 A I think it's roughly 60 percent UHF, 40 percent
4 800.

5 Q What about between trunked and conventional, if
6 you know?

7 A I don't know. I'd have to --

8 Q Okay. Do you know, Mr. Kay, how this mobile
9 inventory would compare to your inventory prior to January
10 of 1994?

11 A It's reduced.

12 Q Do you know by approximately how much?

13 A I'd estimate about 50 percent lower than they were
14 before.

15 Q So, you would estimate that you would have had
16 twice this number of radios prior to the earthquake?

17 A Right, we lost a lot of radios in the earthquake,
18 plus we have been selling off a lot of inventory in the last
19 two years.

20 (Pause.)

21 Q Mr. Kay, I'm going to hand you what has been
22 admitted into evidence as Kay Exhibit 62 and ask you to
23 briefly review that. Prior to the renumbering, this had
24 been Kay Exhibit 10, but it's now Kay Exhibit 62.

25 A Okay.

1 Q First of all, do you recognize these documents?

2 A Yes.

3 Q Is it true that you obtained these documents
4 initially as part of a FOIA request and/or FOIA litigation?

5 A Yes.

6 Q Do you recall approximately when you obtained
7 them?

8 A End of September, 1994 or early October, 1994.

9 Q Describe the documents. What are they?

10 A These are cover letters for blind copies of the
11 308(b) letter that I was sent on January 31, 1994,
12 distributing copies of that 308(b) letter to a Dr. Michael
13 Steppe, a Mr. Edward Cooper, care of Fullerton School
14 District, to a Harold Pick, a Cornelia Dray at Chino Hills
15 Patrol, a Gary Van Diest at Van Diest Brothers, Inc., and
16 Christopher C. Killian at Carrier Communications.

17 Q Now, when you read each of those names, each of
18 those names represented a separate letter in this exhibit,
19 correct?

20 A That's correct.

21 Q What's the date on each of the letters?

22 A January 31, 1994, the same as the 308(b)
23 interrogatory letter to me.

24 Q You reviewed these letters in the past. Other
25 than the addressees and the addresses they're sent to, are

1 the letters each identical, is the text of the letter?

2 A They're all the same.

3 Q Could you read the text of one of them?

4 MR. SCHAUBLE: Objection, Your Honor. The
5 documents are in the record.

6 CHIEF JUDGE CHACKIN: Sustained.

7 BY MR. KELLER:

8 Q Okay. Mr. Kay, do you recognize the names of the
9 individuals whom you just mentioned?

10 A Yes.

11 Q Can you go through each one and say who they are
12 and what their relationship to you is?

13 A Dr. Michael Steppe is a veterinarian who treats
14 horses over in Chino. We had attempted to do business with
15 him once and he took free repeater service for a couple of
16 months -- free in as much as he decided not to pay us for it
17 -- and put up his own repeater, instead. Thus, we never did
18 business with the man.

19 Mr. Edward Cooper is a maintenance supervisor for
20 the Fullerton School District. Fullerton was my customer in
21 1992 and remains to this day my customer.

22 Harold Pick is a competitor, a would-be
23 competitor, who has attempted to compete with me in a number
24 of very unethical ways.

25 Cornelia Dray is, with her husband, Charles Dray,

1 they're proprietors of a patrol company known as Chino Hills
2 Patrol. They became my customer in, I think it was October
3 of 1993 and will, to this day, take repeater service from
4 me, even though I have problems getting money from them.

5 Gary Van Diest, Van Diest Brothers, is a sewer
6 construction company. They do heavy construction. They
7 became my customer in, I believe, early 1994 or late 1993.
8 They are still my customer and very much happy with our
9 service.

10 Christopher C. Killian is a would-be competitor
11 whose shop is an hour by travel away from mine and he's
12 known to have filed a number of complaints me, trying to
13 improve his business by attacking mine.

14 Q So, is it true, then, based on what you've just
15 said, that this collection of people to whom these copies of
16 the 308(b) were sent represent either competitors, customers
17 or, in one case, a potential customer?

18 A That's correct.

19 Q Now, you say you obtained this in a FOIA
20 litigation, probably in the fall of '94, but did there come
21 a time prior to that when you learned that your competitors
22 and customers were becoming aware of the 308(b) and the
23 Commission's investigation?

24 A Yes, we found in February of '94 that copies of
25 the 308(b) had been sent to some people and were making the

1 rounds through the Los Angeles area radio community.

2 (Pause.)

3 MR. KELLER: Your Honor, if we could just take two
4 minutes off the record?

5 CHIEF JUDGE CHACKIN: All right, go off the
6 record.

7 (Whereupon, a short recess was taken.)

8 CHIEF JUDGE CHACKIN: Back on the record.

9 BY MR. KELLER:

10 Q Mr. Kay, I'd like to refer you to Bureau Exhibit
11 287.

12 A Yes.

13 Q Do you recognize this document?

14 A Yes.

15 Q Can you describe briefly what it is?

16 A It's a letter from Yale Trace Materials Handling,
17 Inc., that was sent to me dated September 6, 1994, where it
18 indicates that they want to reduce the number of mobiles for
19 which they're being charged from 38 down to 20. And, I
20 sent, I put a stick-um note on it to my staff as to what I
21 wanted them to do.

22 Q Now, it's correct that this letter asserts that
23 they're being charged for 38 radios, but they're only using
24 20?

25 A Correct.

1 Q Well, Mr. Kay, is it true that in preparation for
2 this hearing, in response to this exhibit, you had the
3 opportunity to review your business records regarding this
4 account?

5 A Yes, I did.

6 Q And, I believe you were requested to do so by
7 counsel in this case, were you not?

8 A That's correct.

9 Q And, in doing such a review, were you able to come
10 to the determination whether your business records reflected
11 that you had, in fact, sold 38 radios and signed up this
12 account for repeater service to at least 38 mobiles?

13 A I believe we actually counted like 41 serial
14 numbers.

15 MR. KELLER: Your Honor, I'd like to have marked
16 as Kay Exhibit 67 this document which is -- I apologize in
17 that I do not believe this document is yet paginated.

18 CHIEF JUDGE CHACKIN: What does the document
19 consist of?

20 MR. KELLER: This document is, again, I apologize,
21 since it's not paginated, I can't tell you, but it's
22 multiple pages consisting first of a letter from the Federal
23 Communications Commission letterhead, dated March -- it
24 appears to be March 2, 1990. Followed by that is some
25 handwritten tabulations, and followed by that are several

1 pages of Buddy Sales invoices and at the end is, the last
2 two pages of the document is a repeater agreement.

3 CHIEF JUDGE CHACKIN: If we're going to have to
4 refer to various pages, you're going to have to paginate
5 them.

6 MR. KELLER: All right, we will. I will. If you
7 want to go off the record for just a second, we'll go ahead
8 and paginate it.

9 CHIEF JUDGE CHACKIN: Go ahead.

10 (Whereupon, a short recess was taken.)

11 CHIEF JUDGE CHACKIN: Back on the record. The
12 document consists of 56 pages, the document described is
13 marked for identification as Kay Exhibit 67.

14 (The document referred to was
15 marked for identification as
16 Kay Exhibit 67.)

17 BY MR. KELLER:

18 Q Mr. Kay, please turn to page two of the document.

19 A Yes.

20 Q Describe briefly to us what that is?

21 A This is a list of serial numbers of Nu-Tech Model
22 SM1020T, 800 MHz radios.

23 Q This document --

24 A There's also one Revco base station at the end.

25 Q This would have been in a copy of a document that

1 you found in the Yale customer file?

2 A That's correct.

3 Q Now, the next several pages, Mr. Kay, starting
4 with page three and forward, and going all the way up to
5 page 54 of the document, first, in general, what are those
6 documents?

7 A These are work orders that show where we installed
8 Nu-Tech two-way radios in vehicles owned by Yale. It shows
9 the vehicle make, the model and the California license plate
10 number of the vehicles, as well as their truck
11 identification that Yale used, like Truck 73A.

12 Q These documents also were copies of documents that
13 you obtained from the Yale customer file?

14 A That's correct.

15 Q These are the documents that you relied on in
16 making the statement that you had verified, that there were
17 at least 38 mobiles sold to Yale?

18 A That's correct.

19 Q Pages 55 to 56 of the document, describe to me
20 what that is, please?

21 A That's one of our repeater agreements.

22 Q Is this a repeater agreement with Yale?

23 A Yes, it is.

24 Q What are the terms of this particular repeater
25 agreement?

1 A That they'll be operating three control stations,
2 35 mobiles, for a total of 38 radios, for a monthly rate of
3 \$585.

4 Q This document also is a copy of a document that
5 you pulled from the Yale customer file?

6 A That's correct.

7 Q You testified earlier about massive amounts of
8 documents that you compiled in responding to discovery in
9 this proceeding. Some of the documents you provided were,
10 in fact, copies of your customer files, correct?

11 A Yes.

12 Q Do you have a belief as to whether these documents
13 would have been included in those?

14 A I have no reason to believe that they would not
15 have been included, because I pulled all customer files and
16 had them photocopied.

17 MR. KELLER: Your Honor, I move the admission of
18 Kay Exhibit 67 in the record.

19 CHIEF JUDGE CHACKIN: Any objection?

20 MR. SCHAUBLE: Yes, Your Honor. First of all, I
21 object to the first page of the document.

22 MR. KELLER: Your Honor, I will withdraw the first
23 page.

24 CHIEF JUDGE CHACKIN: All right, the exhibit is
25 only being offered pages two through 56.

1 MR. SCHAUBLE: Your Honor, I have no objection to
2 pages 55 and 56 of the document, which is the repeater
3 agreement. I object to pages three to 54 on the basis of
4 relevance and my explanation is, these invoices all relate
5 to the '88, '89 time period, and the letter which was in
6 Bureau Exhibit 287 is dated September 6, 1994. First of
7 all, it talks about using radios, which the Bureau believes
8 is the pertinent consideration here.

9 And, the Bureau, even assuming Yale was being
10 used, was sold 38 radios back in 1989, we don't see the
11 relevance of that to this 1994 letter or the question of how
12 many radios Yale was using in 1994.

13 CHIEF JUDGE CHACKIN: Mr. Keller?

14 MR. KELLER: Your Honor, I think perhaps the best
15 way to deal with this is I can ask a few more questions.

16 CHIEF JUDGE CHACKIN: Go ahead.

17 BY MR. KELLER:

18 Q Mr. Kay, the repeater agreement in pages 55 and 56
19 that was entered into looks like in May of '94, correct?

20 A That's correct.

21 Q To your knowledge, was that agreement still in
22 effect in its current form in September of '94?

23 A I believe it was. I know it was.

24 Q Do you have any explanation, Mr. Kay, for Mr.
25 Schauble's concern regarding the fact that most of the

1 customer invoices reflected radios purchased in the '88 and
2 '89 time frame?

3 A They were still using them at the time they signed
4 the repeater contract five years later.

5 Q Is it possible there was some previous repeater
6 contract or do you know?

7 A I believe they were charged for 38 radios and they
8 had a couple of spares sitting on their shelves, since they
9 had over 40 radios, 41 radios.

10 Q That's not really my question. I guess my
11 question is, were you providing repeater service to Yale
12 prior to this May '94 agreement?

13 A Oh, yes, since we'd sold them the radios in '89.

14 Q So, this repeater agreement covered radios that
15 you'd already previously sold them?

16 A That's correct.

17 Q Now, Mr. Kay, when you sell a customer repeater
18 service for a specified number of mobile units, do you have
19 any way of verifying when and how often that customer
20 actually uses each and every unit?

21 A No.

22 Q Is it not true that some of your customers,
23 especially ones who purchase and use larger quantities of
24 radios may, indeed, pass their radios for which they've
25 purchased service because they haven't been used that often?

1 A That's true. It's common.

2 Q What are some of the reasons for that?

3 A Courier companies, their business sometimes is
4 seasonal. They may have 50 radios and only have 40 out on
5 the road, having ten spares when they get real busy. They
6 put the remaining ten out there and sometimes they even come
7 and rent radios from us to bolster the fleet even higher if
8 they get exceptionally busy. It varies when you work peaks
9 like that. They're going to go up in quantity, they're
10 going to go down.

11 Q Do you have any recollection what the specific
12 resolution of this September 4, 1994 letter, which is WTB
13 Exhibit 287 with Yale was?

14 A I believe ultimately we agreed with them, and
15 allowed them to reduce their mobile count with this and
16 reduced our billing to them.

17 MR. KELLER: Your Honor, I still move the
18 admission of the exhibit. I believe it has relevance to
19 responding to this Bureau Exhibit 287.

20 CHIEF JUDGE CHACKIN: Any objection?

21 MR. SCHAUBLE: Your Honor, again, I have no
22 objection to 55 and 56, which is the repeater agreement,
23 which I think is the pertinent portion, but I don't think I
24 see the pertinence of these 50 plus pages of --

25 MR. KELLER: Your Honor, I believe the relevance

1 is this. I mean, I'm having to guess at what the purpose of
2 some of these exhibits are, but my best educated guess is
3 that WTB Exhibit 287 is being offered for the insinuation or
4 the inference that, here is a customer who goes to Mr. Kay
5 and says, gee, you're charging us for 38 radios and we're
6 only using 20. The inference is that somehow this is some
7 example of some kind of shady loading practice by Mr. Kay.

8 What these documents demonstrate, first of all,
9 the repeater agreement demonstrates that Mr. Kay, in fact,
10 had a repeater contract in place with this customer for 38
11 radios. The invoices which preceded indicates that in the
12 time preceding this, Mr. Kay had, indeed, sold this
13 particular customer well in excess of 38 radios. And, now,
14 Mr. Kay has also testified for the background, and I think
15 these documents are relevant to meeting and overcoming the
16 adverse inference that presumably is going to be suggested
17 as a result of Exhibit 287.

18 CHIEF JUDGE CHACKIN: The exhibit will be
19 received. Page one is not being offered. The remaining
20 pages of the exhibit, pages two through 56, will be
21 received. All right, we'll recess until tomorrow morning --

22

23

24

25

1 (The document referred to,
2 having been previously marked
3 for identification as Kay
4 Exhibit 67, pages two through
5 56, was received in evidence.)

6 MR. KNOWLES-KELLETT: Your Honor, if I might
7 inquire of counsel, how long do you expect to go further? I
8 think we can safely say it's going to be a very short day
9 tomorrow, is that fair?

10 MR. SHAINIS: Well, wait a minute.

11 MR. KNOWLES-KELLETT: Okay.

12 MR. SHAINIS: Your Honor, I realize it's 4 p.m.
13 We may be done. If we're not, you're correct, Mr. Kellett,
14 we will have very few questions tomorrow.

15 MR. KELLER: Of course, we've got all night to
16 think of more.

17 MR. KNOWLES-KELLETT: From our conversations off
18 the record, we're approaching the end of this hearing.
19 We've got, you know, a few hours tomorrow, at most, and I
20 was wondering if we might start at 10? I'm coming down from
21 Gettysburg. I had trouble with the ice last week and it
22 might make driving conditions a lot better, if it doesn't
23 make any difference to anyone else?

24 CHIEF JUDGE CHACKIN: As long as we can finish
25 tomorrow, I have no objection to that.

1 MR. KELLER: There's no question we should finish
2 tomorrow, unless the Bureau has rebuttal witnesses.

3 MR. KNOWLES-KELLETT: If we have rebuttal
4 witnesses, we're going to be asking for leave --

5 MR. SHAINIS: You can't rebut your own -- that was
6 being facetious.

7 CHIEF JUDGE CHACKIN: All right, we'll start
8 tomorrow at 10 a.m.

9 (Whereupon, at 4:00 p.m., the hearing was
10 recessed, to reconvene at 10:00 a.m. on Wednesday, January
11 20, 1999.)

12 //

13 //

14 //

15 //

16 //

17 //

18 //

19 //

20 //

21 //

22 //

23 //

24 //

25 //

REPORTER'S CERTIFICATE

FCC DOCKET NO.: 94-147

CASE TITLE: IN RE: JAMES A. KAY, JR.

HEARING DATE: January 19, 1999

LOCATION: Washington, D.C.

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the Federal Communications Commission.

Date: 1-19-99

Sharon Bellamy
Official Reporter
Heritage Reporting Corporation
1220 "L" Street, N.W.
Washington, D.C. 20005

TRANSCRIBER'S CERTIFICATE

I hereby certify that the proceedings and evidence were fully and accurately transcribed from the tapes and notes provided by the above named reporter in the above case before the Federal Communications Commission.

Date: 1-27-99

Diane Duke
Official Transcriber
Heritage Reporting Corporation

PROOFREADER'S CERTIFICATE

I hereby certify that the transcript of the proceedings and evidence in the above referenced case that was held before the Federal Communications Commission was proofread on the date specified below.

Date: 1-27-99

Joel Storey
Official Proofreader
Heritage Reporting Corporation

Heritage Reporting Corporation
(202) 628-4888